

TESTIMONY ON S. 266, REGARDING THE USE OF THE TRUST LAND AND
RESOURCES OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS
RESERVATION OF OREGON,
PRESENTED BY DOUGLAS E. GOE, CHAIR PUBLIC FINANCE GROUP
ATER WYNNE LLP AND BOND COUNSEL TO
CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON,
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS,
JULY 24, 2001

Mr. Chairman, Members of the Committee, my name is Doug Goe.

I am a bond counsel and the chair of the Public Finance Group of Ater Wynne LLP. We serve as bond counsel to the Warm Springs Tribe, to the states of Oregon and Washington and local governments throughout the western United States. We also serve as bond counsel to tribal governments on a national basis. For example, in addition to serving as bond counsel to the Warm Springs Tribe, we have served as bond counsel to the Yakima Nation in Washington, the Nez Perce Tribe in Idaho, the Navajo Nation in Arizona, New Mexico and Utah, and the Seminole Tribe in Florida. Nationally recognized bond counsel are lawyers who work with state, local and tribal governments in financing all types of public projects. As a necessary component of our role, we must analyze the applicable provisions of federal, state and tribal tax, securities and administrative law and the substantive law governing the type of project being financed.

I appreciate the opportunity to testify today on why S. 266 is necessary for the Warm Springs Tribe to issue revenue bonds to finance its acquisition of certain interests in the Pelton and Round Butte hydroelectric project. A key point in understanding why the legislation is necessary is that the bonds being issued are revenue bonds that will be secured solely by the revenues the Tribe derives from selling its share of power generated by the dams. In the event those revenues are not available for whatever reason, bond investors will lose their investment.

1. Revenue Bond Investors are Very Conservative. Bond investors are very conservative because bonds are a form of debt instrument under which the only return to investors is an interest rate. In contrast to the Nasdaq and other stock markets where investors can realize a huge upsides and downside return, bond investors have no upside.

Since the 1800s, the bond market has demanded an unqualified opinion of nationally recognized bond counsel to the effect that the bonds they are purchasing are legal, valid and binding obligations. In the case of revenue bonds which are not backed by the taxing power or other resources

of the entity issuing the bonds, investors require an additional opinion that the pledge of “revenues” securing the revenue bonds is valid and superior to all other liens or encumbrances.

2. Unqualified Opinion Standard Cannot Be Met Without S. 266. After extensive research of applicable federal statutes and case law, we have concluded that we cannot render an unqualified opinion without S. 266 because we do not find any express authority in federal law for the Secretary of Interior to have executed the Long-Term Global Settlement and Compensation Agreement dated as of April 12, 2000 among the Tribes, the Department of Interior and Portland General Electric Company (the “Global Settlement Agreement”).

We also think that there is an issue under Section 10(e) of the Federal Power Act whether compensation for use of the Tribes’ lands should be payable to the United States in trust for the benefit of the Tribe instead of being paid directly to the Tribe as provided in the Global Settlement Agreement. A related concern is that a federal court would consider the proceeds of the sale of electricity from the Pelton Project as trust funds payable to the United States for the benefit of the Tribe and that, therefore, the revenues pledged to bondholders cannot be used to pay principal and interest on the bonds.

Time does not permit me to get into detail regarding other federal law issues. We think that there are good arguments for why these issues we raised could be resolved in favor of the Department of the Interior, the Tribe, PGE and bondholders. However, the issues are not free from doubt. Therefore, the unqualified opinion standard of absolute certainty cannot be met.

3. Bond Underwriters Refuse to Purchase Bonds Without Opinion. We have discussed these matters extensively with the Senior Managing Underwriter of the Tribes’ bonds, Salomon Smith Barney and their counsel, Orrick Herrington and Sutcliffe. Orrick Herrington is the leading bond counsel firm in the United States. Orrick has told us that they, too, would not give an unqualified opinion because of the federal law issues. Salomon has refused to take anything but an “unqualified opinion” on these issues. They have advised the Tribe, as have we, that S. 266 is absolutely necessary for the Tribe to obtain bond financing for the project.

4. Essential Elements of S. 266. The essential elements that we think are required in the legislation is congressional approval of the Global Settlement Agreement insuring that the Secretary has the authority to sign and implement the agreement and that it is a legal, valid and binding agreement with respect to all parties. S. 266 also must make clear that the authority of the Tribe to legally pledge revenues from the Project and that such pledge will not violate Section 10(e) of the Federal Power Act or any other provision of federal law.

We support S. 266, and urge it’s prompt consideration and approval by the Committee, and its prompt passage on the Senate floor.

Thank you for the Committee's time and attention. I would be pleased to answer any questions.